

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-110101-02

Date:

August 14, 2002

### LEGEND:

Decedent =

Spouse =

Date 1 =

Will =

Marital Trust =

Residuary Trust =

Child 1 =

Child 2 =

Child 3 =

w =

Corporation 1 =

x =

Corporation 2 =

y =

State 1 =

State 2 =

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A =

Date 2 =

Date 3 =

Z =

Dear :

This is in response to your authorized representative's letter, dated January 28, 2002, submitted on behalf of Decedent's estate, requesting a ruling under § 2057 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent's husband, Spouse, died on Date 1. Spouse's Will established Marital Trust, for the benefit of Decedent, and Residuary Trust, for the benefit of Decedent during her life, and thereafter for the benefit of Spouse and Decedent's children, Child 1, Child 2, and Child 3.

Item VI.1. of Spouse's Will provides that the trustee of Marital Trust shall distribute the net income of Marital Trust to Decedent for and during her life at convenient intervals, but not less often than annually. Item VI.2. provides that in the event the net income of this trust is inadequate for the maintenance, support or health of Decedent, the trustee is directed to distribute to or apply for the benefit of Decedent so much of the corpus of the trust as may be necessary. Item VI.3. provides that the accumulated income and/or corpus remaining in Marital Trust upon the death of Decedent shall be distributed to the trustee of Residuary Trust to be held and administered as therein provided.

Item VII.1. of Spouse's Will provides that the trustee of Residuary Trust shall distribute to or apply for the benefit of Decedent, during her life, so much of the net income of Residuary Trust as may be necessary for the maintenance, support and health of Decedent. Item VII.2. provides that in the event the net income of this trust is inadequate for the maintenance, support or health of Decedent, the trustee is directed to distribute to or apply for the benefit of Decedent so much of the corpus of this trust as may be necessary. Item VII.3. provides that upon the death of Decedent, the trustee of the Residuary Trust is directed to allocate the undistributed income and corpus of the trust equally among trust shares to be established for each child of Spouse's who is then surviving on the date of Decedent's death. Item VII.3. further provides that each trust share determined for each child of Spouse's who is then surviving on the date of Decedent's death shall be terminated and distributed to each such child free of trust in fee simple absolute.

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Marital Trust was funded with w shares of stock in Corporation 1, x shares of stock in Corporation 2, and other assets. Residuary Trust was funded with y shares of stock in Corporation 1 and other assets. On Spouse's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, the executor elected to deduct the entire value of Marital Trust as qualified terminable interest property under § 2056(b)(7).

Corporation 1 is located in State 1, and Corporation 2 is located in State 2. Both Corporation 1 and Corporation 2 are in the business of A. The other shareholders of Corporation 1 and Corporation 2 are Child 1, Child 2, and Child 3.

Decedent died on Date 2, survived by Child 1, Child 2, and Child 3. On Date 3, Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return was filed. On the Form 706, the estate included the value of Marital Trust in Decedent's gross estate. Decedent's executor elected to deduct the value of the Corporation 1 and Corporation 2 shares held in the Marital Trust as qualified family-owned business interests (QFOBI) under § 2057. On Decedent's estate tax return, the reported adjusted value of Decedent's QFOBI was \$z. Decedent's executor deducted \$675,000, the maximum allowable deduction under § 2057.

Child 1, Child 2, and Child 3 propose to effectuate a statutory merger under § 368(a)(1)(A) and merge Corporation 1 into Corporation 2. Decedent's estate has requested a ruling that the proposed statutory merger will not be considered a disposition of stock triggering the imposition of the additional estate tax under § 2057(f)(2).

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent. Section 2057(a)(2) provides that the deduction allowed by § 2057 shall not exceed \$675,000.

Section 2057(f)(1) provides, generally, that there is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death: (A) the material participation requirements described in § 2032A(c)(6)(B) are not met with respect to the QFOBI which was acquired (or passed) from the decedent; (B) the qualified heir disposes of any portion of a QFOBI (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under § 170(h)); (C) the qualified heir loses United States citizenship (within the meaning of § 877) or with respect to whom an event described in

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§ 877(e)(1)(A) or (B) occurs, and such heir does not comply with the requirements of § 2057(g); or (D) the principal place of business of a trade or business of the QFOBI ceases to be located in the United States.

In this case, Corporation 1 and Corporation 2 are each owned entirely by Child 1, Child 2, and Child 3. The shareholders of Corporation 1 propose to exchange their stock in Corporation 1 for additional shares of stock in Corporation 2. After the proposed transaction, Corporation 2 will continue to be owned entirely by Child 1, Child 2, and Child 3. Provided the proposed transaction qualifies as a statutory merger under § 368(a)(1)(A) and the regulations thereunder, the transaction will not be considered a disposition causing the imposition of the additional estate tax under § 2057(f)(2).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express or imply no opinion on whether Decedent's estate qualifies for the deduction under § 2057 or whether the proposed transaction qualifies as a statutory merger under § 368(a)(1)(A).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman  
Branch Chief, Branch 9  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter